

REMARKS/ARGUMENTS

This is a preliminary amendment in a RCE application.

The Office Actions mailed December 15, 2004 and November 4, 2004 have been carefully reviewed.

Reconsideration of this application, as amended and in view of the following remarks, is respectfully requested. The claims presented for examination are: claims 1-3 and 8-11. Applicant has amended all of claims presented for examination.

In numbered paragraph 4 of the Office Action mailed November 4, 2004, claims 1-3 and 8-11 were allowed; however, in the Office action mailed December 15, 2004 the claims were stated to raise a 112 1<sup>st</sup>/101 operability question and that the claims are allegedly "inoperable" because there is nothing in the claims that such as a computer for characterizing tissue.

Applicants have amended the claims to clarify that it is a "system for producing a signal for characterizing tissue and to correct for optical fluctuations."

Applicants believe that amended claims 1-3 and 8-11 have overcome any 112 1<sup>st</sup>/101 operability question and are in condition for allowance.

SUMMARY

The undersigned respectfully submits that, in view of the foregoing amendments and the foregoing remarks, the issues raised in the Office Action dated December 15, 2004 have been fully addressed and overcome. The present application is believed to be in condition for allowance. It is respectfully requested that this application be reconsidered, that the claims be allowed, and that this case be passed to issue. If it is believed that a telephone conversation would expedite the prosecution of the present application, or clarify matters with regard to its allowance, the Examiner is invited to call the undersigned attorney at (925) 424-6897.

Respectfully submitted,



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